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District Technical Coordinator
San Francisco District Office

Chief, Branch 4
Passthroughs and Special Industries CC:P&SI:Br. 4

Technical Coordination Report No. 17,807
Submitted by Joe Calderaro, Estate Tax Attorney
Our control no. TR-45-1639-90

This is in response to Mr. Calderaro's recommendation that a revenue ruling be published to provide guidance on the valuation, for estate tax purposes, of property held as joint tenants (or as tenants by the entirety). The question presented focuses on whether, in the case of property held jointly by spouses, the portion of the property includible in a decedent's gross estate would be valued as a minority interest.

Mr. Calderaro suggests that, in considering the issue, a distinction should be made from the rationale and holding of Propstra v. United States, 680 F.2d 1248 (9th Cir. 1982), which pertains to the valuation of a decedent's interest in property held as community property with the decedent's spouse. He enclosed copies of a district court judgment to support his suggestion.

For purposes of the estate tax, the value of property includible in a decedent's gross estate is the fair market value; that is, the price at which the property would change hands between a willing buyer and a willing seller. Section 20.2031-1(b) of the Estate Tax Regulations.

Under section 2040(a) of the Code, property held by a decedent and another in a joint tenancy is generally includible in the decedent's gross estate based on the consideration furnished by the decedent for the acquisition of the property. Section 2040(a) contemplates that, if the decedent furnished all of the consideration for the acquisition of the jointly held property, the entire property will be included in the decedent's

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gross estate. Section 2040(b) of the Code provides a special rule for inclusion of one-half of the value of jointly held property when the decedent and the decedent's surviving spouse are the only joint tenants.

Although section 2040 of the Code describes the extent to which jointly held property is includible in a decedent's gross estate, the value of the includible property is generally determined under section 2031 and the regulations thereto.

In Propstra, the decedent's estate consisted primarily of the decedent's interest in real property held by him and his spouse as community property. In determining the value of the decedent's community property interest, the court indicated that under state law community property interests held by spouses are closely akin in character to tenancy in common interests, with each spouse holding an undivided fifty percent interest in the entire property. The court concluded that the decedent's community property interest in the real estate was to be valued as a minority interest.

Under the laws of most states, property that is held in a joint tenancy can be partitioned during the lives of the joint tenants with each joint tenant receiving an undivided proportionate interest in the property. However, if there has been no partition, the entire property subject to the joint tenancy passes to the last surviving joint tenant upon the deaths of all of the other joint tenants. Thus, notwithstanding the special rule of section 2040(b), in the case of property held in a joint tenancy by the decedent and the decedent's spouse, ownership of the entire property would be assumed by the surviving spouse upon the decedent's death. This is a marked contrast to the situation characterized by the court in Propstra, in which the spouses each possessed the right to an undivided one-half of the property.

Please thank Mr. Calderaro for recommending that we publish a revenue ruling providing guidelines for determining the value of such property includible in a decedent's gross estate. We will refer his suggestion to our publication program.

Deborah Ryan of this office is familiar with this memorandum and can be reached at (FTS) 535-9506.

(signed) Richard Grosgebauer
